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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 09/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/068,544

Applicant(s)

MERCIER, ADELE

Examiner

Steven L. Weinstein

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 4 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Swanson (2,830,910).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swanson ('910) in view of Reed et al (2,509,450), Tindall (3,051,584), Hensgen et al (2,635,965), further in view of Sagas et al (2,476,923).

Swanson discloses a bacon package comprising a generally flat substantially rectangular packaging material (10) having a width greater than the longest length of each of a plurality of strips of bacon and wherein the packaging material is spirally wound to protectively surround the strips of bacon. Swanson also teaches that the packaging material can be cellophane (claim 4). See col. 2, line 7 of Swanson in this regard. Claim 2 recites that successive spirals contact an outer opposite major surface and both opposing edge surfaces. It is not clear what this really means. Does this phrase mean every other spiral contacts one opposing major surface and both opposing edge portions? It is therefore not clear whether Swanson teaches the relationship or

Art Unit: 1761

not. In any case, Reed et al, Tindall, and Hensgen et al all show wrapped food slices including bacon wherein the packaging material is wound spirally between the slices to provide packaging material between the slices for easy separation and dispensing which is also both applicant's objective and Swanson. ~~is~~ ^{is} ~~Noted~~ that if there is any difference at all in how the packaging material is oriented relative to the slices it ^{is} due to how the packaging material and the slices are associated with each other. That is, spirally winding will have a different look from spirally folding. The former leaves one with a roll; the latter with a stack. In any case, there will be packaging material between each slice. Sogas et al can be relied on as further evidence that even spiral winding, as opposed to spiral folding, will provide an article/package material relationship as apparently recited in claim 2.

In regard to claims 5 and 7, Swanson discloses a method for packaging bacon comprising providing a substantially flat and generally rectangular sheet of packaging material, positioning a first strip of bacon along an edge with a gap (13) between the strip and the edge, folding the edge of the sheet over the strip of bacon, positioning a second strip of bacon adjacent to the first strip of bacon, folding the first strip of bacon over the second strip and repeatedly performing the steps to protectively package a plurality of strips of bacon in a spiral fashion. Although the figures in Swanson are inconclusive, the space in the material between the first slice and the edge would have to be equal to the width of the slices since Swanson teaches that the slices do not touch each other and there would be contact between the first and second slice if the space was not as wide as the first slice. Note, too, that in rolling the slice and material

Art Unit: 1761

over and over upon itself, a folding of the slices and material over lower slices occurs. In fact, there is no structural difference between applicant's disclosed method and Swanson-except the design result in having a spirally wound roll vs. a spirally wound stack of rectangular plan view. Thus, even if the claims had more specifically recited what was disclosed in terms of the method, whether one rolls (and inherently folds) the packaging material over and over on itself or folds the material in discrete steps over and over on itself would have been obvious and would have been an obvious function of the number of slices to be packaged. Obviously, a spiral roll would be easier to handle than a stacked spiral. See also Sagas et al who is discussed above.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Swanson ('910) in view of Reed et al ('450).

In regard to claim 3, Swanson teaches that the packaging material can be perforated (#16). Claim 3 differs from Swanson in that the packaging material is recited as having a tapered end. As evidenced by Reed et al, it is well established to provide a packaging material for bacon slices with a tapered end (11). Like applicant, Reed et al employs the tapered end as a gripping means. To modify Swanson (a package which must also be opened) and provide a tapered end for its art recognized and applicants intended function (i.e., a gripping means) would have been obvious in view of the art taken as a whole.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Swanson ('910) in view of Ramsbottom et al (2,621,129).

Art Unit: 1761

Claim 15 recites that the strips of bacon are supported on a flat, substantially rigid support material. It is not clear what the structural relationship is between the rigid member and the previously recited structure. In any case, Ramsbottom et al can be relied on to teach it is notoriously old to provide a stack of products with a substantially rigid support material and to modify the combination for its art recognized and applicant's intended function would have been obvious.

Claims 9-11 and 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ramsbottom et al (2,621,129) in view of Wells (5,795,604).

In regard to claim 9, Ramsbottom discloses at least one support material for supporting meat slices and a protective covering material wrapped around said material and said slices of meat. Claim 9 differs from Ramsbottom et al in specifically reciting bacon. Once it is known to package meat slices as recited and taught by Ramsbottom et al, the particular meat product packaged in that manner is seen to have been an obvious matter of choice, especially when it was known to package a plurality of strips of bacon in a rigid support system as evidenced by Wells. In regard to claims 10 and 11, plastic and cellophane are conventional packaging materials and to select a conventional packaging material for its art recognized and applicant's intended function is seen to have been obvious. In regard to the method claims, Ramsbottom et al teaches providing at least one support material, a plurality of meat slices, positioned on the support material and wrapping a covering around both the support material and meat slices and the combination with Wells teaches it would have been obvious to package

Art Unit: 1761

bacon slices. To employ multiple supports would have been an obvious expedient once it was known to use one.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over references as applied to claim 9 above, and further in view of Backus (3,895,120) who teaches the obviousness of overlapping the edges of a protective covering.

Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 13 and 14 above, and further in view of Swanson (910), Reed et al ('450), Tindall ('584), Hensgen ('965) and Sogas et al ('923).

Claims 16 and 17 combine two conventional packaging concepts as evidenced by the art taken as a whole. To modify Ramsbottom et al and provide a stack of slices spirally wound as taught by Swanson and the art taken as a whole for its art recognized and applicants intended function would have been obvious.

The remainder of the references cited on the USPTO 892 forms are cited as pertinent art.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Weinstein whose telephone number is 703-308-0650. The examiner can normally be reached on Monday-Friday 7:00am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Art Unit: 1761

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

S. Weinstein/mn
September 9, 2003


STEVE WEINSTEIN
PRIMARY EXAMINER 1761
9/10/03